COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking by the Department of Telecommunications)

and Energy, pursuant to 220 CMR §§ 2.00 et seq., to)

promulgate regulations governing an expedited dispute) **D.T.E. 00-39**

resolution process for complaints involving competing)

telecommunications carries as 220 CMR §§ 15.00 et seq.)

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COMMENTS OF BELL ATLANTIC-MASSACHUSETTS

Bell Atlantic-Massachusetts ("BA-MA") files these comments on the proposed regulations issued by the Department on June 5, 2000, to establish an expedited dispute resolution process for complaints between competing telecommunications carriers.

Although the Department's existing complaint procedures are sufficient to address all disputes that may arise between carriers, BA-MA does not object in principle to the Department's establishment of an accelerated process for handling certain disputes. However, because an accelerated process can place a significant burden on carriers and may affect substantive rights, the Department should include certain conditions in any rules it adopts. The specific conditions BA-MA recommends are: (1) the use of an accelerated process should be voluntary; (2) the process should not be a substitute for dispute resolution procedures parties have provided for in their interconnection agreements; (3) a decision rendered in an expedited proceeding should have no precedential effect in other proceedings; and (4) the time intervals in a Massachusetts process should be the same as those established by the Federal Communications Commission ("FCC") for its Accelerated Dockets. These proposed changes to the

Department's proposed regulations are reasonable and appropriately balance various carriers' interests by enabling certain disputes to be resolved by the Department as promptly as possible while fully protecting parties' due process rights.

I. DISCUSSION

A. Use of an Accelerated Process Should Be A Voluntary Choice of Both Parties.

The first issue raised by the Department's proposed rules is whether one party should be allowed to invoke unilaterally the expedited dispute resolution process. Proposed Rule 15.03 of 220 CMR allows *one* party to request an expedited review – the first step in the accelerated process. Upon receipt of such a request, the Department will supervise an informal mediation and assess, *inter alia*, whether the dispute is appropriate for expedited review. If the dispute is not resolved, and the Department finds that the matter is appropriate for the Accelerated Docket, then a party may file a complaint stating that the Department has accepted the complaint for treatment in an Accelerated Docket.

Proposed Rule 15.04 of 220 CMR identifies the criteria for admitting a proceeding onto the Accelerated Docket. It clearly states that "[b]oth (or all) parties to a dispute need not agree to the expedited process; it is sufficient that only *one* party so elect" (emphasis added). BA-MA disagrees with that proposal.

A carrier's participation in the Department's accelerated process should be voluntary, *i.e.*, the process should be invoked only where *both* parties agree that the issues raised are suitable to being handled on this basis. This parallels the approach used by many state and federal courts that have adopted "fast track" procedures for handling disputes. Under the Department's proposed Accelerated Docket rules, standard hearing procedures are modified, giving parties substantially less time than is normally the case to conduct discovery, prepare for evidentiary hearings, oral argument or briefing, or engage in settlement negotiations. Because of that expedited schedule, which can place a considerable burden on a party and affect substantive rights, it is appropriate to use accelerated procedures only with the consent of all parties to a complaint proceeding. To do otherwise would deprive a party of some of the procedural rights and preparatory time that it would have under normal complaint rules.

Allowing one party to elect the Accelerated Docket process may also provide parties with the opportunity to "game" the complaint process for competitive advantage. For instance, a carrier could propose using accelerated procedures in the most complex cases, knowing that the other party would be afforded insufficient time to prepare an adequate defense. This is of particular concern because the complainant will have ample time before filing its case to prepare fully whereas the responding carrier is severely constrained in its ability to prepare because of the extremely short time frames under the proposed process. Such an unequal position is unfair and raises due process concerns. Accordingly, in order

to protect fully the interests of all parties concerned, those procedures should be used only with the consent of all parties.

A. **Parties Should Be Bound By Dispute Resolution Procedures in Interconnection Agreements.**

The second issue concerns the relationship between the Department's proposed rules and the dispute resolution provisions contained in BA-MA's interconnection agreements with carriers. The Department's expedited process should not be used as a substitute for contractual provisions governing dispute resolution matters, which may vary based on the individual carrier agreement. Rather, the relevant provisions of the applicable interconnection agreement should prevail, unless otherwise agreed to by the parties. This ensures that the Department's accelerated process does not undermine or conflict with the terms and conditions agreed to by the parties to resolve disputed matters.

B. **If a Department Decision Is Rendered in an Accelerated Docket, It Should Have No Precedential Effect on Other Subsequent Proceedings.**

The third issue involves the potentially binding effect of a Department decision in an Accelerated Docket on subsequent proceedings. The Department should make clear in its proposed rules that any findings that result from the accelerated procedures relate *only* to the particular dispute before it and should not be given any preclusive or precedential effect in other proceedings that may be filed in other proceedings before the Department or in other forums. Because of the highly truncated nature of the proposed Accelerated Docket, its use, whether or not voluntary, should be limited to the instant case, and other parties should not be bound by the outcome. Thus, parties should not be precluded from presenting a ***de novo*** factual case if the same issues are raised in a separate proceeding.

C. **The Department Should Apply, at a Minimum, the Same Set of Deadlines Established by the FCC for Accelerated Dockets.**

The final issue relates to a modification of the Department's proposed timeline. To the extent possible, the Department's expedited process should be consistent with FCC rules governing complaints in Accelerated Docket proceedings. In particular, the Department should adopt time frames that are, at a minimum, the same as the FCC specified intervals. Likewise, the Department should not seek to impose additional requirements on the parties beyond those placed on them on the due dates specified in the FCC's rules. Such consistency between similar state and federal procedures would minimize confusion and not impose an added undue burden on parties already subject to substantially short

deadlines established by the FCC. The Department should also clarify the distinction between calendar and business days as used in its proposed regulations to ensure parties' mutual understanding of the applicable time frames at various stages in the process.

To place more compressed deadlines on the parties in Accelerated Dockets in Massachusetts than utilized by the FCC would only undermine the expedited complaint process by further limiting the time for parties to prepare for evidentiary hearings and correspondingly engage in settlement discussions. This is counter-productive and could make it difficult for parties, particularly the responding carrier, to present their strongest case. Accordingly, the Department should, at a minimum, reflect the extended FCC time intervals, particularly for the litigation of the matter.

II. CONCLUSION

Participation in the Accelerated Docket process should be voluntary by both parties and should not be a substitute for dispute resolution procedures contained in interconnection agreements. Also, because an expedited process can compromise a party's ability to be fully prepared, a Department ruling should not be given precedential effect, unless otherwise agreed to by the parties, but should be limited to the case before the Department. Finally, the Department should not institute new, shorter time limitations than those established by the FCC for its Accelerated Dockets.

Respectfully submitted,

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